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May 10, 2019

TO: The Chairman and Members of the Commission

FROM: Patricia Gannon, Public Utility Analyst

SUBJECT: IN THE MATTER OF THE APPLICATION OF CHESAPEAKE UTILITIES CORPORATION FOR APPROVAL OF THE ISSUANCE OF COMPANY STOCK AND LONG-TERM DEBT. (FILED APRIL 15, 2019). – PSC DOCKET NO. 19-0228

Application:

On April 15, 2019, Chesapeake Utilities Corporation ("Chesapeake" or the "Company") submitted an application ("Application")to the Delaware Public Service Commission ("PSC" or "Commission") pursuant to 26 *Del. C.* § 215 requesting approval for the issuance of up to $350,000,000 of Chesapeake long-term debt securities ("LTD") and the issuance of up to $150,000,000 in common stock. On May 7, 2019, in Order No. 9387 the Commission determined that (i) good cause existed to extend the 30-day approval period[1] to provide Commission Staff ("Staff") additional time to evaluate the application; and (ii) the docket would be considered at the May 21, 2019 meeting. If the Application is approved, the Company anticipates using the proceeds to increase its capacity under an existing shelf[2] arrangement as authorized by the PSC Order No. 8770 issued in August 2015 and to "finance capital expenditures and future capital projects over the next twelve to thirty-six months"[3].

Chesapeake's expected capital expenditures of $168 million for 2019 are forecasted to be primarily investments in its regulated natural gas distribution and transmission business segments. The Company also expects to finance approximately $600 million in capital expenditures for the years 2019 through 2021, "primarily for the Company's regulated energy segment as well as to consummate acquisitions and investments that align with the Company's strategic plan."[4] Additionally, the Application explains that depending on the timing of these capital requirements

[1] *See* 26 Del. Admin. C. §§ 1001-1.9.2 and 1002-1.2.
[2] An agreement between a lender and a borrower whereby the lender agrees to make funding available to the borrower, but is under no obligation to provide a specific amount of money. The interest rate on each funding is determined at the time of the request and is based on market conditions at the time of funding.
[3] Application at ¶ 6.
[4] Application at ¶ 6.

and funding of the new issue debt, the Company may utilize the proceeds to "pay down a portion of its debt outstanding under its short-term revolving lines of credit previously utilized… to fund working capital requirements and capital projects."[5] The Company has requested Commission approval at this time because it intends to execute a note agreement within the next few months. The Company states that "the interest rate on the new debt will be competitive (currently at or below 5%) plus any additional premium charged for any delayed drawdown, which is expected to be less than 0.50%."[6]

According to the Application, Chesapeake's Board of Directors has authorized the Company to submit this request to the Public Service Commission. If the request is approved, the Company will seek approval of their Board of Directors prior to the issuance of the requested $350 million in additional long-term debt and $150 million of new common stock equity.

Lastly, Chesapeake is requesting approval to issue approximately 1,704,545 shares of voting common stock for a total of $150,000,000. These funds will be used for capital improvements as mentioned above. The Application bases its calculation on an $88 share price for the Company's voting common stock. In Chesapeake's last debt filing in 2017, "pursuant to the Commission's August 2017 Order (PSC Order No. 9107) Chesapeake has authorization to issue up to 2,857,143 shares of additional voting common stock for a total of $200 million. Chesapeake however has not yet issued any of such shares."[7]

<u>Staff's Review:</u>

Staff performed a review of the Application and additional supporting documents provided by the Company for accuracy and completeness. The mathematical calculations of the schedules provided in the Application were also reviewed. Staff has calculated the before and after issuance of the debt to equity rates and summarized the percentages in the chart below.

	After Issuance Authorized – Order No. 8770[8] (2015)	**After Requested Issuance in Docket 17-0695[9] (2017)**	**After Requested Issuance in this Docket 19-0228[10] (2019)**
Debt Percentage	57.61%	52.4%	44.91%
Equity Percentage	42.39%	47.60%	55.19%

The Company has represented that this debt issuance is consistent with its current debt covenants which limit the level of unsecured debt to total capitalization to 65%.[11]

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[5] Application at ¶ 6.
[6] Application at ¶ 8.
[7] Application at ¶ 3.
[8] Docket 17-0695 Application, Schedule 1, Column titled "Pro Forma after Issuance Authorized."
[9] Docket 17-0695 Application, Schedule 1, Column titled "Pro Forma after Issuance Authorized."
[10] Application, Schedule 1, Column titled "Pro Forma after Issuance Authorized."
[11] Application, at ¶ 7.

Staff has also reviewed a copy of a legal opinion dated April 15, 2019, by Parkowski, Guerke & Swayze (the "Firm") for Chesapeake regarding the legality of the proposed issuance of up to $350 million in unsecured debt and up to $150 million of voting common stock. This opinion represented that based on its knowledge of the applicable statute, 26 *Del. C.* § 215 and its legal judgement, the Firm believes that the proposed issuance of debt and common stock for the purposes set forth in the Application is in accordance with law, subject to any necessary approval on the part of the Maryland and/or Florida Public Service Commission(s), and that Chesapeake is in compliance with all applicable federal securities laws. The Firm also states that the approval of Chesapeake's Board of Directors will be required prior to the issuance. The opinion also explained the limited scope of the Commission's review of filings under § 215, as set forth by the Delaware Supreme Court in *Diamond State Telephone Co. v. PSC.*[12] Staff respectfully agrees with the provided assessment regarding the Commission's review under § 215.

<u>Staff's Recommendation:</u>

Staff's review indicates that the Company has complied with the filing requirements[13] to issue up $150,000,000 of the Company's voting common stock and up to $350,000,000 in long-term debt pursuant to 26 *Del. C.* § 215. The Application explains that the issuance is made in accordance with law and for a proper purpose. As a result of the competitive interest rates represented by the Company and the Commission's limited scope of review, Staff submits that the Application is consistent with the public interest. Therefore, Staff respectfully recommends that the Commission approve the Application for the aforementioned reasons and subject to the conditions that (i) Chesapeake's Delaware Division may not construe this approval as a ratemaking treatment for future case filings; (ii) Chesapeake must obtain the prior approval of its Board of Directors as to the actual amount of stock to be issued and the terms and conditions of any issuance as well as the actual amount of long-term debt to be issued and the terms and conditions of any issuance; (iii) within 30 days of the closing of the issuance of the $350,000,000 of long-term debt, the Company must file copies of its fully executed note agreement for this application as well as any other documents or information required by 26 Del. Admin. C. § 1002, Part D, 4.0 with the Commission under this docket; and (iv) Chesapeake must obtain any additional necessary approvals from the Maryland and/or Florida Public Service Commission(s) and comply with all applicable federal securities laws.

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[12] *Diamond State Telephone Co. v. Delaware PSC*, 367 A. 2d 644 (Del. 1976). ("...in the absence of a showing of improper consideration, fraud, bad faith or self dealing on the part of the members of appellant's board of directors in their decision to issue shares of stock for the ostensible purpose of raising needed moneys [the Commission may not] substitute its judgment for that of a board of directors...")
[13] 26 Del. Admin C. § 1002 – Part D.